A

SP HAWK INC

v.

TWENTY FIRST CENTURY OLEOCHEMICALS SDN BHD & ORS

B

HIGH COURT MALAYA, JOHOR BAHRU
KANG HWEE GEE J
[CIVIL SUIT NO: 22-180-1998]
15 NOVEMBER 2010

C

TORT: *Negligence - Carriage of goods by sea - Damage to vessel during loading - Loading of stearic acid into tank on board - Tank ruptured during introduction of nitrogen into ullage space - Rupture due to ullage hatch being closed and not left open - Duty to leave hatch open -* D *Whether with owner of vessel - Whether with owner of loading facility*

The plaintiff's vessel ('the Stolt Hawk') was damaged while being loaded with stearic acid at the second defendant's loading facility in Pasir Gudang, Johor – and arising therefrom – the plaintiff sued the second defendant, and the third defendant surveyor appointed E to oversee the loading, for breach of duty of care. The facts showed that, on the day in question, the second defendant, together with the third defendant, were tasked with loading the acid cargo into 'Tank 8CS' of the vessel. It was not disputed that the process of loading involved *inter alia* the introduction of F nitrogen into the ullage space of the tank (a procedure called 'blanketing'), presumably to preserve the stearic acid in its sea voyage. However, soon after blanketing commenced, Tank 8CS succumbed to rupture and a shudder and a 'bang' was felt on board the Stolt Hawk. Further, the stearic acid was also found to G have leaked into the duct keel and the adjoining Tank 9CS of the vessel. Before the learned judge, evidence had been adduced by the plaintiff that the rupture was caused by 'over pressurization of nitrogen' – or in the words of the plaintiff's expert witness – 'the oversupplying of nitrogen from the shore terminal (by the second H defendant) … which caused a sudden surge of pressure into Tank 8CS at the start of the blanketing procedure'. The second defendant however retorted that, over pressurization, if at all, occurred because the ullage hatch of the tank, which should have been kept open during blanketing, so as to prevent any pressure I build-up, had been left closed by the plaintiff. The plaintiff's 3rd officer, in his evidence, admitted that the ullage had been left open during the preceding process of purging and sparging, but that he

had closed it during blanketing at the request of the surveyor who had then wanted to take the reading of nitrogen flow through the drain cork at the vent mask. Further, there was evidence indicating that the plaintiff's 1st officer had instructed the hatch to be re-opened prior to the commencement of the blanketing procedure, but the order had not been heeded, and the hatch had remained closed when nitrogen was supplied to Tank 8CS. The facts further showed that the second defendant, in loading the stearic acid, had followed the normal Standard Operating Procedure ('SOP') for such undertaking, and that being so, a question arose before the learned judge as to whether the second defendant, or for that matter the third defendant surveyor, who also had to answer to third party claim from the second defendant, could, on the facts and in the circumstances, be held liable for the damage to the vessel.

Held (dismissing the plaintiff's claim):

(1) The plaintiff's claim is premised on the probability that the rupture was caused by nitrogen being introduced into the tank board at excessive pressure from the second defendant's storage tank situated some 1.5 kilometres away on shore. The plaintiff however had to rely on the evidence of its expert whose postulation of the likely cause of the rupture was in turn premised on the assumption that the ullage hatch was closed when blanketing commenced. This finding of the cause of rupture however was no different from the finding of the second defendant's expert, namely that 'had the hatch been left open, no over pressurization could have occurred as the open hatch would have facilitated the escape of any excess pressure'. (paras 35, 36 & 38)

(2) The second defendant, in loading the stearic acid into Tank 8CS, had followed the instructions prescribed in their SOP, which they had used in previous operations. The SOP did not provide any instruction as to whether the ullage hatch should be closed or kept open during nitrogen blanketing. Nevertheless, it is the court's finding that the accepted practice during nitrogen blanketing was to leave the ullage hatch open. This is because: (i) Tank 8CS itself did not provide any opening or safety valve to allow the release of any excess nitrogen during nitrogen blanketing, and an open ullage hatch would therefore ensure that any excess pressure would be able to escape; and (ii) the usual practice of keeping the

A ullage hatch open during blanketing is consistent with the statements made by the Chief Officer and the Master of the vessel. (paras 39-44)

(3) The view as expressed by the plaintiff's third witness B statement, namely that even if the hatch was open, the tank would have ruptured by the sudden forceful surge of the liquid in the tank at the start of blanketing, is unacceptable. This is because: (i) there is no conclusive evidence as to how much pressure was applied by the second defendant during C blanketing; (ii) assuming that nitrogen was in fact suddenly introduced into Tank 8CS at full bore of six bar, the witness did not provide any data to indicate how much of such force can the tank tolerate with the ullage hatch closed before it ruptures; and (iii) it would be wrong to rely on the shuddering D felt and the 'bang' heard on board the vessel at about the time blanketing commenced to conclude that excess pressure was being applied. The phenomenon felt was more likely the consequence of the rupture rather than its cause. (paras 45-48)

E **(4)** In law, the entity which undertakes the loading operation owes a duty of care to the owner of the vessel during loading operation. However, in this case, it is clear that the second defendant as the loader of the cargo stearic acid into the F plaintiff's vessel, did not breach its duty of care. (paras 50-51)

(5) It is not disputed that the task of operating and managing the vessel's equipments at all stages of loading, including the last stage of nitrogen blanketing, lies with the plaintiff. It was the plaintiff's responsibility to keep to the usual practice of leaving G the ullage open during blanketing. And in the peculiarity of this case, after the hatch was closed by its 3rd officer to enable the surveyor to take the nitrogen reading, it was the plaintiff's duty to ensure that the hatch be reopened. This court is therefore constrained to find that the plaintiff was the author H of its own misfortune. (paras 54 & 55)

(6) The plaintiff's case against the second defendant is dismissed. On the same grounds, the third party action brought by the second defendant against the third defendant surveyor is also I dismissed. (para 56)

Case(s) referred to:

Tatem Steam Navigation Company Ltd v. Great Western Railway Company and South Wales Siemens Steel Association (Third Parties) [1942] 73 Lloyd's Law Report 89 ***(foll)***

For the plaintiff - K Sivakumar; M/s Skrine
For the 2nd defendant - K Prakash (Navrita Kaur with him); M/s Shook Lin & Bok
For the 3rd defendant - Abdullah Abdul Rahman; M/s Cheang & Ariff

Reported by Wan Sharif Wan Ahmad

JUDGMENT

Kang Hwee Gee J:

Introduction

[1] The plaintiff, the owner of the vessel the 'Stolt Hawk', claims against the defendants for loss and damage suffered by its vessel the Stolt Hawk during the loading of stearic acid at Pasir Gudang port on 31 July 1993.

[2] The 1st defendant ("the Shipper") was the Voyage Charterer of the Stolt Hawk under a contract in writing dated 18 June 1993.

[3] The 2nd defendant was at all material times the owner of the loading facility at Pasir Gudang and the entity appointed by the Shipper to be responsible for the loading of the Shipper's stearic acid cargo on to the Stolt Hawk.

[4] The 3rd defendant was a Surveyor appointed by the Shipper to supervise the loading of the said cargo on board the vessel.

[5] The Stolt Hawk berthed at Pasir Gudang on 31 July 1993 to load 13 parcels of vegetable oil products (technically known as stearic acid) through 5 shore lines into Tank 8CS assigned by the Ship's Master for the shipment.

[6] The Tank 8CS was ruptured in the last stage of the loading process when nitrogen had to be introduced into the ullage space of the tank by a process called 'blanketing'.

A **The Process Of Applying Nitrogen**

[7] The purpose of applying nitrogen into the tank was to preserve the stearic acid during its sea voyage.

B **[8]** First nitrogen would have to be applied to the empty tank before loading by a process called 'purging' to reduce the oxygen in the tank; next nitrogen would have to be introduced during loading by a process called 'sparging' as the stearic acid was being loaded; and finally after loading when nitrogen would have to be applied to the unfilled space (the space between the surface of the C stearic acid and the ceiling of the tank) by a process called 'blanketing'.

[9] It is common ground that the integrity of Tank 8CS on the Stolt Hawk was sound before loading; that nitrogen blanketing D was to be carried out by 2nd defendant to be applied to the cargo in Tank 8CS upon completion of loading; and that damage was caused to Tank 8CS during the process of nitrogen blanketing.

E **[10]** The nitrogen was supplied from the 2nd defendant's storage tank located some 1.5km onshore and delivered through shore lines into the ship's tank via the ship's manifold and loading lines. The pressure at the storage tank was pre-set at six bar by the gas supplier Malayan Oxygen.

F **[11]** During blanketing nitrogen was introduced to the ullage space not by direct application through the hatch on the top of the tank but by letting the gas bubble through the cargo pump stack at the bottom of the tank to reach the ullage space.

G **[12]** Two loading personnel were deployed by the 2nd defendant; one at the storage tank inshore and the other at the shore line to control the flow of the gas to the Tank 8CS on board. The personnel stationed at the storage tank would receive instruction by radio from the personnel stationed at the shore line as to when H to open and to close the supply valve to release the gas as and when required during the entire process of loading including during blanketing.

The Incident

I **[13]** It was established from the evidence of Mr. Rainer Michael Sokolowski, the Ship's Master (PW1) and Mr. Richelieu Joyo Mondano, the 3rd Officer (PW2) and the Ship's Logbook that

loading operations of the cargo into Tank 8CS commenced at 5.30am on 31 July 1993 and completed at 9.40am on the same day.

[14] Upon completion of the sparging, the 3rd defendant's representative together with the Chief Officer of the vessel took the ullage measurements of Tank 8CS in order to determine the quantity of cargo in the said tank, before nitrogen blanketing of Tank 8CS commenced at 10.55am.

[15] When blanketing began soon after, a shudder followed by a bang were felt and heard on board the Stolt Hawk.

[16] Ten to fifteen minutes later, the 3rd defendant's representative reported to PW2 that nitrogen was no longer flowing into Tank 8CS. PW2 then checked all the valves controlling the flow of nitrogen on board and found them to be open.

[17] On investigation, it was later found that the stearic acid had leaked out of Tank 8CS and could be found in the duct keel of the vessel. Nitrogen blanketing had to be stopped. By 11.45am the duct keel was sealed off. It was observed that stearic acid had also escaped into the adjoining previously empty tank 9CS.

[18] An inspection was later carried out by PW1 at just past midnight on 1 August 1993. It was found that a rupture had occurred in the bulkheads of Tank 8CS.

The Claim

[19] The claim against the 1st defendant shipper was discontinued before the trial.

[20] The plaintiff's claim against the 2nd defendant is in negligence for having breached its duty of care,

(a) in applying excessive pressure in filling nitrogen into Tank 8CS; and

(b) in using the wrong procedure akin to tank 'purging' (which required a greater pressure) instead of the accepted procedure in blanketing which required the application of a lesser pressure.

[21] As against the 3rd defendant (the Surveyor) on a similar cause of action in negligence, for failing in its duty of care to supervise the loading of the cargo into Tank 8CS and for having instructed the plaintiff's ship's officer to close the ullage hatch during blanketing when it should have been kept open. The closure of the ullage hatch, it is alleged, had prevented the tank from being adequately ventilated thereby allowing the pressure to build up causing its rupture.

[22] A third party proceeding was also brought against the 3rd defendant by the 2nd defendant for the right to be indemnified should it be found liable to the plaintiff.

The Evidence

[23] The plaintiff's case rests principally on the evidence of its expert (PW3) Mr. Richard Thomas Gregory, a holder of a U.K. Certificate of Competency as Extra Master which he acquired in 1981. He had been in the 'marine industry' since 1967 and presently a consultant with Noble Denton Europe Ltd, a marine and engineering consultancy company.

[24] He prepared three reports for the purpose of the trial and gave evidence to show that the likely cause of the rupture was over pressurization during nitrogen blanketing.

[25] The main report was based on his survey of the vessel on 8 August 1993 several days after the incident but after repairs on the vessel were carried out in Singapore wherein he attributed the failure of the Tank 8CS on 31 July 1993 to "the oversupply of nitrogen from the shore terminal".

[26] Mr. Richard Gregory's explanation appears in his first report dated 8 September 1993 at pp. 9 to 12 of bundle A which he prepared after his inspection of the damaged Tank 8CS on the Stolt Hawk on 8 August 1993. The relevant portion of the report read:

> 3.4 **Applying The Nitrogen Blanket**
>
> 3.4.1 Stearic Acid is carried under a nitrogen blanket for quality control reasons and it is normal practice to blanket the cargo after loading. The final ullage after loading in tank 8CS was 1.4 metres leaving an ullage space of about 0.4 metres below the level of the main deck and an ullage volume of about 18 m3. The ship was approximately even keel.

3.4.2 With such a small ullage space remaining, providing the nitrogen blanket requires neither a large volume of nitrogen nor nitrogen at high pressure. All that is required is to release nitrogen into the tank either down through the tank lid or bubbled up through the cargo pump stack. The procedure is simple and straightforward.

3.4.3 We understand that nitrogen was supplied from a storage tank on shore through the shore lines and into the ship's tank via the ship's manifold and loading lines and that the working pressure applied to the shore/ship's lines was 6 bar (90 psi).

According to the Third Officer, he opened the manifold and the pump discharge valves and told the pumpman to open the P/V valve. Nitrogen was then applied from the shore.

3.4.4 Blanketing started at 1055 hours. According to the Third Officer a bang was heard: according to the deck log book "little shuddering felt throughout ship". At 11.45 hours, the pumpman discovered cargo in the duct keel.

Some time before 1145 hours the two SGS surveyors, who were on board to monitor the blanketing operation, noticed that the nitrogen pressure in the ullage space was low – this was confirmed by the Chief Officer just before the pumpman's report of cargo in the duct keel and at this time the Chief Officer found the ullage port closed. A check of the ullage in tank 8CS at 1155 hours found that it had dropped from 1.4 metres after loading to 6.2 metres.

4. Cause Of The Damage

4.1 After tank 8CS was emptied the tank was inspected by the ship's crew and a surveyor from Gellatly Hankey, Pasir Gudang acting for Owners/UK P&I. The damage reported is consistent with the tank being over-pressurised.

4.2 Whilst the design scantlings for the tank are such that cargoes with densities up to 1.5 tonnes/m3 can be loaded, the tank is not designed to resist high pressures. This is evidenced by the setting of the P/V valve (0.25 psi).

4.3 The tank was fully loaded to within about 0.4 metres of the main deck. The evidence is that the manifold and pump stack valves were open, with nitrogen applied at full bore at 6 bar (90 psi) pressure. Applying nitrogen in this manner is, in our opinion, purging the tank atmosphere

A rather than the gentle application of a nitrogen blanket. It is probable that there was a surge of liquid in tank 8CS as the ship's line and pump stack were blown clear. There is no evidence of any product being spilled on deck, therefore in our opinion it is probable that the ullage port was closed; if it had been open and if product had been spilled this may have been sufficient to relieve the over-pressure which ruptured the tank.

4.4 There is some doubt as to whether the P/V valve was open or closed. Assuming that it was open, then it is evident that the size of the 80 mm vent line was insufficient to relieve the high pressure due to the nitrogen in the 6 inch (150 mm) ship's lines. With high pressure in the lines being released via the pump stack into the bottom of the tank, the effect of the inevitable surge of liquid in the tank would be to block the vent line which was fitted to the side of the tank lid 300 mm above the main deck. The only relief mode left for the tank structure was for the bulkhead(s) to rupture.

[27] In his second report dated 14 March 2005 he introduced a new finding attributing the rupture to the "sudden surge of pressure into tank 8CS at the start of the blanketing procedure", after having had the benefit of the report prepared by the 2nd defendant's expert Captain Nigel J Snowden (DW1).

[28] In his third report dated 5 April 2005 he merged his finding in the second with the first by concluding that "The damage to the tank 8CS of Stolt Hawk on 31 July 1993 was as a result of oversupply of nitrogen from the shore terminal."

The 2nd Defendant Expert's Finding

[29] The plaintiff expert's finding was disputed by the 2nd defendant.

[30] Its own expert (DW1) Captain Nigel Snowden, a holder of a Certificate of Competency as Master of Foreign Going Vessel issued by the Under Secretary of the Board of Trade, United Kingdom on 28 September 1978, for vessels carrying Dangerous Cargo of Crude Liquid Petroleum, Petroleum Products or Liquid Chemicals.

[31] He prepared a report and gave evidence. He attributed the cause of the rupture of Tank 8CS to the failure to keep the ullage hatch open just before blanketing began.

[32] Captain Nigel Snowden's evidence appears at paras 9 and 10 of his witness statement (marked as "DW1"):

(a) the cause of the rupture was a failure to allow the tank to vent during the blanketing procedure. There is nothing to suggest that the shore staff had applied any different technique during the blanketing procedure on this vessel than that applied to other vessels before or subsequent to this incident. The only apparent difference between the blanketing procedure and all the other procedures in respect of the 8CS tank that day (including the pigging and the actual loading of the cargo) was that the ullage port was closed at the time of the incident. The closure of the ullage port caused a rise of pressure in the tank which led to the rupture.

(b) The tank would not have ruptured as the atmosphere would have been able to vent safely due to the size of the hatch opening. The one crucial document which supports my opinion is the "Statement Regarding Over pressurizing of Tank NR 8CS" prepared by the Chief Officer of the vessel (p. 133 Bundle DB2).

(c) A plain reading of the second and third paragraphs of the statement shows that the Chief Officer was particularly concerned that the ullage port was closed at the time of the blanketing procedure which, in my opinion, clearly demonstrates that the ullage port on the Stolt Hawk ought to have been open at the material time.

(d) The fact that the Chief Officer also took remedial action by immediately opening the ullage port BEFORE any problem had been reported is also extremely pertinent in that it indicates that he was aware that the closing/securing of the ullage port would potentially lead to problems.

(e) This leads to a conclusion that the Chief Officer was aware that there was a problem associated with the only remaining venting from this tank (ie the p/v valve) OR that he was aware that the p/v valve alone would not, for some reason, provide sufficient relief during the blanketing of the tank.

[33] The fact that the ullage hatch was not open during blanketing is indisputable as PW2 the 3rd officer of the plaintiff had confirmed in his evidence that the ullage hatch was closed

just before blanketing. The 1st officer on noticing that the ullage hatch had been closed had instructed that it be opened. But apparently his instruction went unheeded as the ullage hatch had remained closed during blanketing. In the previous process of purging, sparging and pigging of the tank before blanketing, the ullage hatch had always been open.

[34] Mr. Richard Gregory's response to the opinion of Captain Nigel Snowden on this point was that even if the ullage hatch was open at the commencement of blanketing the rupture to the tank would still have occurred. He explained this at para. 21 of his third witness statement:

> In other words, whilst it is true that some amount of the excess pressure could have been relieved if the ullage hatch was open by the product in tank 8CS spilling on deck, the sudden surge of liquid in tank 8CS on the commencement of the introduction of nitrogen would have caused the sides of tank 8CS to rupture. In this respect, my conclusion that the rupture was caused by a sudden surge as early as in my first report of 8 September 1993 was based on the recordings in the logbook of the shuddering felt by the Master and the bang felt by PW2 upon the commencement of nitrogen blanketing. This evidence is also substantiated by the evidence of the difficulty experienced by the surveyors in sampling the atmosphere in tank 8CS when nitrogen blanketing commenced.

Finding

[35] The plaintiff's claim is premised on the probability that the rupture was caused by nitrogen being introduced into the tank on board at excessive pressure from the 2nd defendant's storage tank situated some 1.5 kilometers away on shore.

[36] As with all structural failures, its occurrence was sudden and unseen. The plaintiff had to rely on the evidence of its expert, Mr. Richard Gregory whose postulation of the likely cause of the rupture was premised on the assumption that the ullage hatch was closed when blanketing commenced.

[37] Mr. Richard Gregory did not consider in detail the effect of the hatch being open during blanketing but did say in his first report that "if (the ullage port) was open and if (the) product had been spilled, this may have been sufficient to relieve the over pressure which ruptured the tank".

[38] His finding on the cause of the rupture of the Tank 8CS was therefore no different from the finding of the 2nd defendant's expert Captain Nigel Snowden that had the ullage hatch (or port) been left open no over pressurization could have occurred as the open hatch would have facilitated the escape of any excess pressure.

[39] The 2nd defendant in loading the stearic acid into Tank 8CS had followed the instructions prescribed in their own Standard Operating Procedure (SOP) for Product Dispatch to Vessel using Nitrogen Facilities, which they had used in previous operations. With respect to nitrogen blanketing SOP Item 22 read:

> After pigging, Loading Master shall notify operator to continue releasing the Nitrogen until the surveyor informs that the required Oxygen percentage in the Vessel tank has been achieved. (Applicable if blanketing of Vessel's tank is required).

[40] The SOP did not provide any instruction as to whether the ullage hatch should be closed or be kept open during nitrogen blanketing.

[41] Nevertheless, it is my finding that the accepted practice during nitrogen blanketing was to leave the ullage hatch open on the following ground:

[42] The Tank 8CS itself did not provide any opening or safety valve to allow the release of any excess nitrogen during nitrogen blanketing. The only outlet for the gas to escape is through the vent drain valve of the vent pipe. No evidence was forthcoming with respect to how much pressure the vent drain valve was able to take to release any excess pressure. But by its tiny size (80 mm) it would not be wrong to estimate that its capability to release any excess pressure was limited. An open ullage hatch under the circumstances would ensure that any excess pressure would be able to escape and indeed it is not in dispute that it had been open during purging and sparging.

[43] That the usual practice was to keep the ullage hatch open during blanketing is consistent with the statement made by the Chief Officer of the vessel, Mr. G. Knutsen on the day of occurrence. The statement at pp. 6 and 7 of bundle C was previously disputed by the 2nd defendant but is now admitted. In his statement Mr. Knutsen said that on noticing that the ullage hatch was closed when blanketing commenced, he had ordered

that it be opened at once followed by his own immediate action to fully open the drain cork on the vent mask to release the pressure in the tank.

[44] It is also consistent with what the Master of the vessel, Mr. Rainer Michael Sokolowski (PW1) opined in cross-examination that he would open the ullage hatch if it was found to be closed during blanketing.

[45] The view expressed by Mr. Richard Gregory in his third witness statement that even if the hatch was open, the tank would have ruptured by the sudden forceful surge of the liquid in the tank at the start of blanketing is unacceptable.

[46] Firstly, there is no conclusive evidence as to how much pressure was applied by the 2nd defendant during blanketing. It would be wrong to assume that it was released at full bore of six bar by the 2nd defendant's operator at the supply tank only because the supplier of the nitrogen Malayan Oxygen Limited had set the maximum pressure of six bar at the supply tank. According to the 2nd defendant's loading master Encik Zulkefle bin Musa (DW2), he had closed the jetty valves after pigging. The valves would have to be reopened in order to begin blanketing. As counsel for the 2nd defendant rightly submits, it was improbable for six bar of nitrogen to be suddenly released down the line to Tank 8CS as the valve at the jetty was a gate-valve which can only be opened or closed gradually by turning the wheel requiring some 30 turns to be fully opened.

[47] Secondly, assuming that nitrogen was in fact suddenly introduced to the Tank 8CS at full bore of six bar, Mr. Richard Gregory did not provide any data to indicate how much of such force can the tank tolerate with the ullage hatch closed before it ruptures.

[48] Thirdly, it would be wrong to rely on the shuddering felt and the 'bang' heard on board the vessel at or about the time blanketing commenced (as recorded in the logbook of the vessel) to conclude that excess pressure was being applied. The phenomenon felt on the vessel was more likely the consequence of the rupture rather than its cause.

[49] The postulation was at best a conjecture introduced at a late stage of the trial to improve the plaintiff's case.

Decision

[50] I accept the principle in *Tatem Steam Navigation Company Ltd v. Great Western Railway Company and South Wales Siemens Steel Association (Third Parties)* [1942] 73 Lloyd's Law Report 89, that the entity which undertakes the loading operation owes a duty of care to the owner of the vessel during loading operation as submitted by counsel for the plaintiff.

[51] But in the instant case, it is clear that the 2nd defendant as the loader of the cargo of stearic acid into the plaintiff's vessel did not breach its duty of care.

[52] The plaintiff's own 3rd Officer (PW2) had admitted that the ullage hatch had been open during the preceding process of purging and sparging. He had closed it during blanketing at the request of the surveyor who had wanted to take the reading of nitrogen flow through the drain cork at the vent mask, but there is no evidence that the ullage hatch was reopened after the surveyor had taken the reading.

[53] Had it remained open as it should be after sparging, it is improbable that there could be any built up of pressure in Tank 8CS to cause the rupture as any excess pressure would have been compromised by the open ullage hatch.

[54] It is not disputed by all the parties that the task of operating and managing the vessel's equipments at all stages of loading including the last stage of nitrogen blanketing lies with the plaintiff (Notes of Evidence p. 26).

[55] It was the plaintiff's responsibility to keep to the usual practice of leaving the ullage hatch open during blanketing; and in the peculiarity of the instance case, after the hatch was closed by its 3rd officer to enable the surveyor to take the nitrogen reading, it was the plaintiff's duty to ensure that the hatch be reopened. The plaintiff, I am constrained to find was the author of his own misfortune. Its case against the 2nd defendant and the 3rd defendant should therefore be dismissed with costs.

[56] On the same grounds, the action brought by the 2nd defendant against the 3rd defendant/3rd party should be dismissed with costs.